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Serial No. 09/710,516
Docket No. RPC-0485-PUS

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Gerald R. Koefeldt, et al.

Examiner: Castellano

Serial No.: 09/710,516

Group Art Unit: 3727

Filed: November 10, 2000

Attorney Docket No: RPC-0485-PUS

Title: **CRATE FOR BOTTLES AND OTHER CONTAINERS**

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Appellant submits this Reply Brief in response to the Examiner's Answer mailed April 12, 2005.

CERTIFICATE OF MAILING

I hereby certify that this **Reply Brief (8 pages)** is being sent via U.S. First Class Mail to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on June 13, 2005.


Konstantine J. Diamond

STATUS OF THE CLAIMS

The Examiner has indicated that Appellant's Status of the Claims is correct, but in his summary of cancelled claims omits claim 42 (see "Status of Amendments" in Appeal Brief for the factual background regarding claim 42 being cancelled and replaced with claims 47 and 48 in the Amendment After Final). Also, in the Examiner's arguments, the Examiner lists claim 42, but not claims 47 and 48. For purposes of this appeal, where the Examiner lists claim 42, the Board should substitute claims 47 and 48. Thus, claims 1-17, 19-21, 23-26, 29-41 and 43-48 are pending, rejected and appealed.

ARGUMENT

Appellant submits specific arguments in response to particular statements in the Examiner's Answer and to point out where the Examiner has not indicated any disagreement with Appellant regarding certain claims. This is intended to be in *supplement* to Appellant's Appeal Brief, and Appellant has made an effort not to repeat the arguments from the Appeal Brief here. Therefore, the fact that some arguments are not repeated or expanded upon here only means that Appellant is simply relying on its original Appeal Brief, not that Appellant has dropped its argument with respect to the rejection of those claims.

I) § 102 Rejection Over Sauey

A) Claims 1, 3 and 30

The "standoff portions" in claims 1, 3 and 30 are "low profile." The specification of the present application defines "low profile" in this manner:

Accordingly, the height of the standoff portions 50 for each bottle is preferably less than the corresponding bottle measurement for the "bottom of bottle to the bottom edge of label." Again, standoff portions 50 keep the bottle from contacting the divider members and thus prevents rubbing against, peeling or other damage to the bottle label or to the other container markings. In keeping with the teachings of the present invention, *standoff portion 50 should have a*

sufficiently low profile in order to achieve these same objectives. (page 11, lines 15-22).

The “vertical protuberances 32” in Sauey are not “low profile.” Sauey indicates, “the cylindrical objects are completely supported along their length . . .” (col. 1, lines 27-28) and later that the “vertical protuberances 32 support a considerable length of the object in contact therewith.” (col. 2, lines 36-37). Since the purpose of the low profile standoff portions is to prevent contact of the label with the dividers, the relative heights of the standoff portions and the container in Sauey is irrelevant. The term “low profile” is clearly defined in the specification to refer only to the vertical height of the standoff portions, not their transverse width. Therefore, claims 1, 3 and 30 are not anticipated by Sauey.

B) Claims 3, 12 and 34

Claim 3 also recites that the bottle is contacted below the central label area by the standoff portions. Claim 12 recites that the at least one standoff member “does not contact the label of the container.” Claim 34 recites that the standoff members do not contact the label of the container. Again, in the Sauey shotgun shell box, “the cylindrical objects are completely supported along their length . . .” (col. 1, lines 27-28). Because the Examiner does not argue that the vertical protuberances of Sauey would contact a bottle below a label and would not contact a label, claims 3, 12 and 34 should be allowed.

II) §103 Rejection Over Sauey in View of Koefeldt

The Examiner has not shown that a “lid capture area” would be desirable in the Sauey shotgun box or that any such desire or motivation is expressed in the references. Nor has the

Examiner shown that the shotgun shells would be taller than the dividers, or would be tall enough to be received within a “lid capture area” even if one were provided. Therefore, there can be no motivation to add a lid capture area to the Sauey shotgun shell box.

III) §103 Rejection Over Sauey in View of Koefeldt and Apps ‘814

The Examiner now argues that the possible motivation for replacing the separate cover 12 of Sauey with a hinged lid is to restrict movement or prevent the loss of the lid. However, there is no indication that either of these is a problem with the lid in the Sauey shotgun shell box. Sauey indicates that the box “preferably has a cover 12 with side walls that telescope over the side walls of the box.” (col. 1, lines 46-48). Thus, the box can be placed in the inverted lid to prevent loss of the lid. Therefore, there is no such motivation for this change.

IV) §103 Rejection Over Apps in View of Sauey and Hepp

A) Claims 1-3, 5, 7-13, 15, 17, 19, 25, 26, 29-41 and 43-48

The Examiner admits that Apps does not show the claimed standoff portions, but now argues that the motivation for adding standoff portions is to “more effectively secure the container so that the containers are further spaced and prevented from touching each other.” (Examiner’s Answer, page 9). However, as shown in Figure 11 of Apps (reproduced below), the divider walls between the bottles in Apps completely separate the bottles and prevent them from touching each other. Thus, adding the claimed standoff portions would not address the proposed motivation offered by the Examiner.

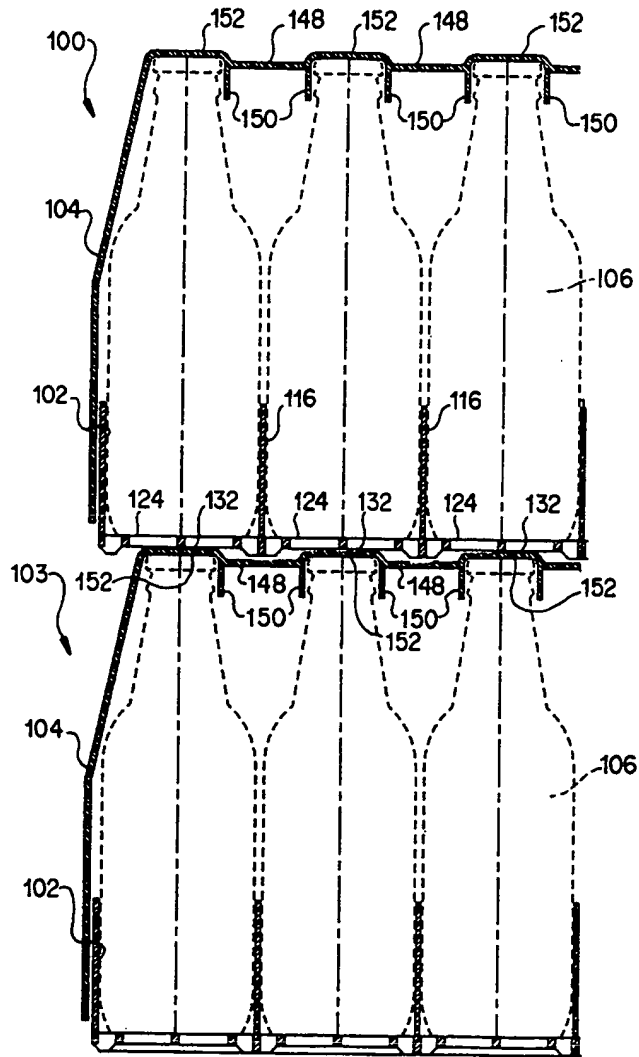


FIG. 11

Apps. Fig. 11

Nor is there any teaching in Sauey or Hepp that standoff portions would prevent containers from touching each other. The bottle tray of Hepp only engages the base of the bottle. Hepp has solid walls 46 that extend the full height of the dividers, but only the base of the bottles. Hepp does not teach standoff portions that are low profile or shorter than the divider walls. Even looking at Hepp, Sauey and Apps together, there is no apparent motivation for adding the claimed standoff portions to Apps.

Additionally, Sauey is a shotgun shell box. One of skill in the art of cases for beverage containers does not look to shotgun shell boxes. Sauey is not analogous art.

For these reasons, all of the claims are patentable over Apps, Sauey and Hepp.

V) §103 Rejection over Gale in view of Apps, Sauey and Hepp

A) Claims 1-5, 7-15, 17, 19, 20, 23-26, 29-41 and 43-48

The Examiner now argues that Gale could maintain “a thinner beverage container which has a bottom indentation that engages the circular rib 96 in a spaced relationship from the container.” (Examiner’s Answer, page 10) No such beverage container is disclosed in the references. Additionally, claims 1, 12 and 20 recite that the lower portion of the container is on the outer surface of the container. The circular rib 96 of Gale would not engage the outer surface of the “thinner beverage container” proposed by the Examiner.

Claim 39

Claim 39 positively recites “the beverage container” and (together with claim 1, from which it depends) also recites that “the standoff portions contact the lower portion of the beverage container without contacting the central label area” of the beverage container. The circular rib 96 of Gale would not contact the outer surface of the Examiner’s “thinner beverage container” below a central label area of the beverage container.

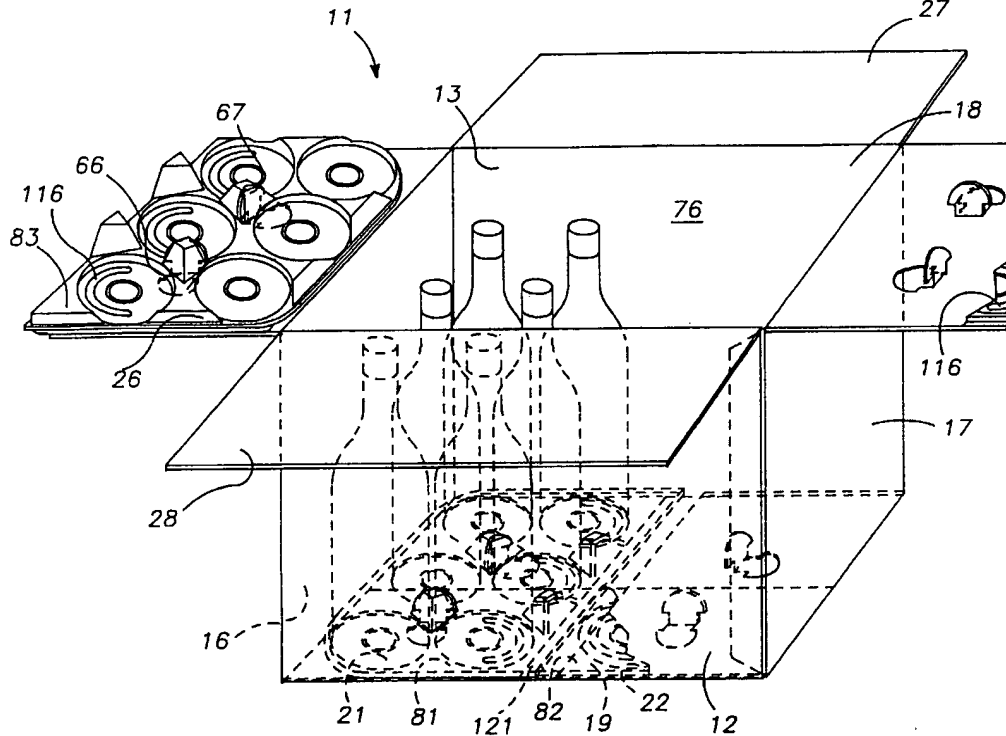


FIG. -1

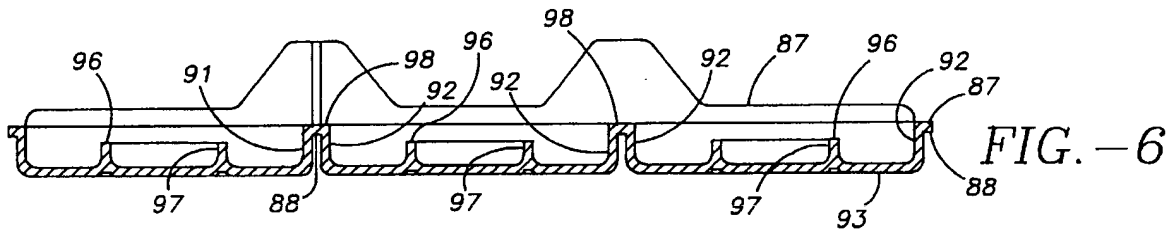


FIG. -6

Claim 30

The Examiner has still not addressed claim 30, which the Examiner has previously indicated would be allowable (as explained in the Appeal Brief). The circular rib 96 in Gale is not “extending from a longitudinally-extending one of the divider members to a transversely-extending one of the divider members in the corners,” as claimed.

B) Claim 34

The Examiner has not addressed claim 34. The circular rib 96 in Gale is not “protruding inwardly toward the container *from* the divider members,” as claimed.

VI) §103 Rejections Over Apps in view of Gale, Koefeldt, Sauey and Hepp

The Examiner now argues that the separator rings 150 in the lid of Apps are the claimed “spacer members.” However, claim 20 recites that the spacer members are “disposed proximate the floor and spaced inwardly from the divider members into corresponding container receiving areas such that the container support areas and spacer members define pockets for receiving the lower container portion.” The separator rings 150 cannot be the claimed “spacer members” because they are not “proximate the floor,” as recited in claim 20.

Closing

No fees should be due. If any fees are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,



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